

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Stephen J. Brown
Serial No.: 10/605,226
Title: MESSAGING TO REMOTE PATIENTS IN A NETWORKED
HEALTH-MONITORING SYSTEM
Filed: September 16, 2003
Attorney Docket No.: 7553.00110 / 03-0910
Examiner: Fuelling, M.
Art Unit: 3626
In Response To: Office Action mailed April 13, 2010

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal by an attorney either of record or acting under 37 CFR 1.34.

REMARKS

Review is requested for the following reasons:

1. The Examiner has clearly made the following errors in the rejection(s):

The Examiner has failed to show each of the elements in the references and/or provide an articulated rational to combine the references.

In particular, claim 1 provides that the at least one central server is configured to analyze the health-related data, produce reports, including standardized reports from the health-related data, and transmit the reports to a health care professional associated with the at least one patient. Fu is silent concerning a central server analyzing health-related data, as presently claimed. Fu appears to teach information being stored in a composite log for analysis by trained personnel (see column 8, lines 22-26 of Fu). Kirk does not appear to cure the deficiencies of Fu. Kirk does not appear to teach a server analyzing health-related data, as presently claimed. Therefore, the references, alone or in combination, do not teach or suggest each of the limitations of claims 1, 44 and/or 87. Applicant's representative requests that the review specifically addresses this issue.

The section on page 3 of the Office Action is an inadequate response to applicant's previous amendment. The argument presented by the Examiner that the central server is not defined, and (apparently) that the limitations of the claims defining what the central server does can simply be ignored by the

office is not proper. The pending claims specify what the central server does (see items i-v of the independent claims). Applicant's representative requests that these limitations are fully addressed, particularly in view of Fu.

Furthermore, the rejection of claim 20 in view of Official Notice is not proper. Claim 20 provides the further limitation that the memory circuit is a program cartridge. Fu and Kirk are silent concerning a program cartridge. The current Office Action takes Official Notice that a program cartridge is "old and well known in the computer arts" (see page 9 of Office Action dated 12-15-2009). However, the current Office Action fails to provide a basis for the conclusion that a memory circuit that is a program cartridge is "old and well known in the computer arts". It is respectfully requested that the Examiner provide (i) a more detailed explanation of the basis giving rise to the allegation that a memory circuit that is a program cartridge is "old and well known in the computer arts", and/or (ii) the statutory basis of such Official Notice. Claim 63 contains similar limitations and is also respectfully traversed for the same reasons as claim 20.

Furthermore, the rejection of claim 43 in view of Official Notice is not proper. Claim 43 provides the further limitation that the computer receives the reports after transmitting an authorization code to the at least one central server, wherein the authorization code identifies a user as the healthcare professional. Fu and Kirk are silent concerning an authorization code or identifying a user as a healthcare

professional via an authorization code. The current Office Action takes Official Notice that transmitting a report only after a central server identifies a user as the health care professional via an authorization code is "old and well known in the computer arts" (see page 9 of Office Action dated 12-15-2009). The current Office Action fails to provide a basis for the conclusion that transmitting a report only after a central server identifies a user as a health care professional via an authorization code is "old and well known in the computer arts". It is respectfully requested that the Examiner provide (i) a more detailed explanation of the basis giving rise to the allegation that transmitting a report only after a central server identifies a user as a health care professional via an authorization code is "old and well known in the computer arts", and/or (ii) the statutory basis of such Official Notice. Claim 86 contains similar limitations and is also respectfully traversed for the same reasons as claim 43.

Furthermore, claim 38 is independently patentable over the references. Claim 38 provides the system may be configured to enable the program instructions to be (i) provided from the a least one central server for storage in the memory circuit and (ii) executed by the device at a remote patient site. Fu is silent concerning program instructions being provided by a central server for storage in a memory circuit, as presently claimed. At best, Fu teaches a home unit programmed to prompt a patient to perform tests and take medication (see column 8, lines 18-22 of Fu). Fu does not teach program instructions provided by a central server, as

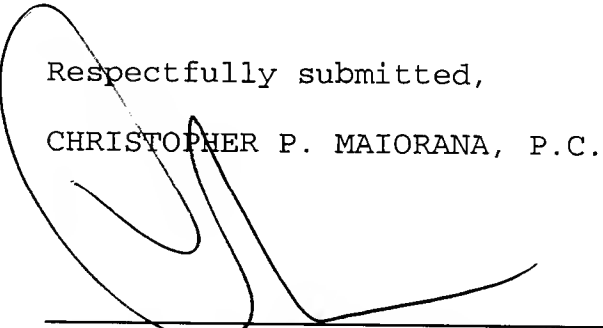
presently claimed. Kirk does not cure the deficiencies of Fu. Therefore, the references, alone or in combination do not teach or suggest each of the limitations of claim 38. Claim 81 contains similar limitations. As a result, claims 38 and 81 are independently patentable and the rejection should be withdrawn.

Therefore, the outstanding office action is not proper in view of the file history and the attached arguments. Applicant's representative requests either (i) a new office action specifically addressing the discussed deficiencies or (ii) a notice of allowance. Applicant's representative is available for a telephone interview in the event the Examiner is interested in discussing the claims and/or possible amendments that would address the Examiner's concerns.

If any additional fees are due, please charge Deposit Account No. 50-0541.

Respectfully submitted,

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Dated: August 13, 2010

c/o Health Hero Network

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